the Rules of the Stock Exchange, is without substance.

I am satisfied that in order to fulfil the defendant's contracts of sale, as they were bound to do, the plaintiff company had reasonably purchased scripts in the total value of $51,591.76 and allowing for a profit of $2,305 made on certain of these purchases, the plaintiff company had incurred a loss of $49,286.76.

There will be judgment for the plaintiff company in the sum of $49,286.76 and costs.

Judgment for the plaintiffs.

Solicitors: *Gibb & Co., Dharmananda & Co.*

KAM WAI JIN v. SUPERINTENDENT OF LANDS & SURVEYS, THIRD DIVISION

[A.C.J. (B.T.H. Lee J., Chieng Hie Kwong and Lee Swee Ling Assessors) March 7, 1969]

[Sibu — Land Reference No. 5 of 1969]

Land Laws — Acquisition of land — Objection against award — Principles to be applied — Land Code (Sarawak, Cap. 81), s, 56,

This was an objection against the award of the superintendent in respect of land resumed by the Government of Sarawak. The superintendent offered $28,000 as compensation which was the award made by a government valuer. Another government valuer had recommended an amount of $32,000 later amended to $41,000.

Held, varying the award: (1) in awarding compensation any and every element of value which the lands possess to the owner must be taken into consideration in so far as it increases the value to him; in other words not the land alone but all its potentialities must be considered in assessing the value;

(2) in this case taking the evidence as a whole and making all due allowances the award of the government valuer should be varied and compensation allowed at $60,000.

Cases referred to:—

(1) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, F.C.

(2) *Maori Trustee* v. *Ministry of Works* [1959] A.C. 1.

(3) *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore* [1954] M.L.J. 71.

(4) *Corrie* v. *MacDermott* [1914] A.C. 1056.

(5) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [1968] 1 M.L.J. 293, P.C.

LAND REFERENCE.

C.T. Wong for the applicant.

J.S. Abernethy for the respondent.

B.T.H. Lee J.: This is an objection against the award of Superintendent of Lands and Surveys, Third Division referred to the court under section 56 of the Land Code (Cap. 81) in respect of land resumed by the Government of the State of Sarawak of approximately 0.31 acre of land owned by Kam Wai Jin being land (hereinafter referred to as "the land acquired") comprising Lot 160 Block 36 in Sarikei Land District.

A declaration in accordance with the provisions of section 48 of the Land Code was published in the Sarawak Government *Gazette* on 16th December, 1966. It is therefore required to determine the proper "market value" as at 16th December, 1966.

The Superintendent of Lands and Surveys (hereinafter referred to as "the superintendent") held an inquiry on 18th October, 1967 at which Law Mun Seng the son who held a power of attorney from the owner appeared.

At the inquiry on 18th October, 1967 the superintendent by virtue of section 51 of the Land Code offered $28,000 as compensation which was the award made by Mr. Ambrose Foo, a government valuer, although Mr. R.L. Searcy another government valuer had recommended an amount of $32,000 and amended to $41,000.

In accordance with section 59 of the Land Code the court appointed Mr. Chieng Hie Kwong and Mr. Lee Swee Ling as assessors. A copy of the provisions of sections 60 and 61 of the Land Code was supplied to each of the assessors.

Mr. C.T. Wong appeared for the owner, and Mr. J.S. Abernethy for the superintendent at the hearing of this reference on the 26th, 27th and 28th November, 1968.

For ease of reference, the awards of compensation, amount claimed and brief particulars of the land acquired are set out as follows:—

Description of land	*Nature of property*	*Special Conditions*	*Amount Awarded*	*Amount Claimed*
Lot 160 Block 36	Residential	Land to be used for residential purposes.	$28,000 by Mr. Ambrose Foo.	$120,000
0.31 acre more or less		Only one house to be built on land	$32,000 by Mr. R.L. Searcy subsequently amended to $41,000	Reduced to $110,000 in the course of hearing.

Mr. Ambrose Foo assessed the value of the land acquired at the sum of $28,000 as follows:—

Land — 0.31 acre at $62,500			$19,375
Main building *before renovation* =	30′ x 24′ = 720 sq. ft. at $3	$2,160	
Kitchen/ Passageway	17′ x 8′ = 136 sq. ft. 30′ x 12′ = 360 sq. ft. 17′ x 10′ = 170 sq. ft. 666 sq. ft. at $1.50	$ 999	
+ Assuming 50% of renovation completed before section 48		$2,750	
+ $800 — already paid to contractor		$ 800	
2 sheds say		$ 75	
1 W.C. say		$ 50	
+ 460 lineal feet of fencing at 25¢ p.l.ft.		$ 115	
			$ 6,949
Cultivations.			
4 coconut palms at $10 = $40			
9 coconut palms at $ 5 = $45			85
			$26,409
+ Disturbance allowance say			1,591
			$28,000

According to Mr. Ambrose Foo sales of direct comparable land are practically not available apart from the two sales (which are dealt with hereunder). Both these sales contained improvements at the time of sale. In the absence of more comparable sales they may be used after proper analysis being made to indicate the general value of residential land in this area.

Sale No. 1 — i.e. Lot 140 Block 36 Sarikei Land District sold in January 1967 for $12,000 contained a wooden house about 15 years old. The value of the house at time of sale was estimated at $5,500, which left a sum of $6,500 attributable to the land. The land is accessible via Cross Road which is of gravel formation. The land is flat and filled to a reasonable level although the land is subject to occasional flood. The area of the land is 0.32 acre more or less and is restricted to residential purposes. The land, based on this analysis, works out at about $20,300 per acre.

Sale No. 2 — i.e. Lot 164 Block 36 Sarikei Land District sold in February, 1967 for $17,000 contained a wooden house about 15 years old. The value of the house at time of sale was estimated at $7,000, which left a sum of $10,000 for the land. The land is accessible via Cross Road which is of gravel formation. The land is flat and is more or less the level of the road. The area of the land is 0.24 acre and is restricted for residential purposes. The land, after deduction, works out at about $41,650 per acre.

Both these lots are situated away from the subject land but these three pieces carry the same condition i.e. for residential purposes. These three lots have dwelling houses erected on the land although the conditions of these buildings differed due perhaps to proper maintenance or otherwise. There is no doubt about it that the subject land is more conveniently accessible to and from Sarikei Bazaar and due to its proximity to the bazaar any extension to the existing bazaar, consideration may be given to this area first. Since the land is restricted for residential purposes, it should be valued as such. In making his valuation in respect of the subject land Mr. Ambrose Foo had these two sales in mind.

Mr. Searcy however assessed the land acquired as follows:—

Gross realization 8,000 sq. ft. at $11 per sq. ft.			$88,000
Less Sale Costs.			
(1) Agents Commission 5 blocks at $196		$ 980	
(2) Legal fees 5 blocks at $75		$ 375	
		$ 1,355	$86,645
Less profit and risk say 25%			$69 316
Less interest for say 1 year at 8%			$64,181
Less Development Costs.			
Filling 13,500 sq. ft. at $1.39 per sq. ft.		$18,765	
Road construction 5,500 sq. ft. at $1.44 per sq. ft.		$ 7,920	
Subdivision 5 blocks at $100	$500		
20 pegs at $1	$ 20		
5 titles at $6	$ 30	$ 550	
Supervision & Advertising		$ 250	
		$27,485	$36,696
Less enhanced premium on change of title condition.			
8,000 sq. ft. as commercial at $4.59 per sq. ft.		$36,696	
8,000 sq. ft. subject to existing title condition for which 100% development would be allowed at $3.75 per sq. ft.		$30,000	
Difference		$ 6,696	
Enhanced premium (50% of difference)		$ 3,348	$33,348
Less risk in changing title condition and obtaining subdivision approval say 10%			$30,316
Less Stamp duty on purchase and annual rent for one year say 3%			$29,433
Plus an amount to cover any consequential monetary loss due to the acquisition as per section 60(d and e) of the Land Code say $2,567			$32,000

He therefore recommended that an amount of $32,000 be paid as compensation for Lot 160, Sarikei Town District.

In the course of the hearing, Mr. Searcy submitted amended figures and assessed the

land acquired at the sum of $41,000 as follows:—

Gross Realization.			
1 lot (corner) 20' x 80' (1,600 sq. ft.) at $12.50 per sq. ft.		$20,000	
4 lots each 20' x 80' (1,600 sq. ft.) at $11 per sq. ft.		$70,400	$90,400
Less Sale Costs			
Agents Commission 1 lot at $220		$ 220	
Agents Commission 4 lots at $196		$ 784	
Legal fees 5 lots at $ 75		$ 375	
		$ 1,379	$89,021
Less Profit and Risk — say 25%			$71,217
Less Interests at 8% for one year			$65,942
Less Development Costs.			
(+) Filling 13,500 sq. ft. at 36¢ per sq. ft.		$ 4,860	
(+) Road Construction 5,500 sq. ft. at $1.44 per sq. ft.		$ 7,920	
(+) Subdivision 5 lots at $100	$500		
20 pegs at $1	$ 20		
5 titles at $6	$ 30		
		$ 550	
Supervision & Advertising		$ 250	
		$13,580	$52,362
Less Enhanced Premium on change of Title Condition.			
8,000 sq. ft. as commercial at $6.40 per sq. ft.		$51,200	
8,000 sq. ft. as subject to the existing title condition for which 100% development would be allowed, at $4.80 per sq. ft.		$38,400	
Difference		$12,800	$45,962
Enhanced Premium		$ 6,400	
Less Risk for obtaining subdivisional approval say 5%			$43,773
Less Risk for obtaining AVTC approval say 10%			$39,794
Less Annual Rent for one year 2% ALV			$39,013
Less Stamp Duty on Purchase 1% market value			$38,626
Plus an amount to cover any consequential monetary loss due to the acquisition as per section 60(d) and (e) of the Land Code	$2,300		$40,926
	Say		$41,000

(+) These figures have been accepted as correct by Counsel for applicant.

I must add that when Mr. Searcy prepared his first valuation he was not aware at that stage that the land acquired was under the Land (Control of Sub-Division) Ordinance. He knew about this before he prepared his second report.

Mr. C.T. Wong for applicant contended that the land acquired ought to be assessed at $110,061 as follows:—

0.31 acre = 8,000 sq. ft at $23 per sq. ft.		$184,000
Less		
(1) Costs of filling	$ 3,600	
(2) Loss of income for 1½ years at 5%	$13,800	
(3) Developer's Risk at 20%	$36,800	
(4) Subdivision & Survey	$ 550	
(5) Costs of road	$ 7,920	
(6) Legal fee	$ 188	$ 62,858
		$121,142
(7) Enhanced Premium		$ 11,081
		$110,061

I pass therefore to consider the aspect of the case.

Sometime in 1965 the Sarikei District Council was asked to consider the adoption of the Town Planning Regulations of Sarikei Town, and to consider the Draft Town Planning Regulations setting out the various zones.

Prior to 1966, the area including the land acquired was residential, and subsequently in the same year the area was gazetted as a shop-house lot.

Up to a point it was not seriously in dispute that the land acquired is within the commercial zone which was approved by Sarikei District Council on 15th December, 1956.

The Goverrntment has approved in principle the change of title condition from residential to shop-lot. This however is subject to approval by higher authorities.

The land acquired is a dwelling house on a swampy land. There is a kampong road in front. There are no other methods of access.

According to the superintendent it is impossible to say when the future development will take place. It depends upon population survey.

$110,061 works out at $13.74 per sq. ft.

Counsel for the applicant maintain that the market value is $13.74 per sq. ft. This figure is based upon the sales of adjoining shop-houses immediately before the publication of the Notice dated 16th December, 1966, namely Lot 232 Block 36, Lot 10 Block 36, Lot 19 Block 36, Lot 56 Block 36 and Lot 80.

In respect of *Lot 232* (Exhibit P.10)		
Selling price which includes the price of shophouse		$105,000
Less — Costs of shophouse (including filling)	$20,000	
Loss of income for 1½ years at 5% i.e. $85,000 x 3/2 x 5%	$ 6,735	
Developer's risks at 20% i.e, $85,000 x 20%	$17,000	$ 43,735
		$ 61,265
Enhanced Premium		$ 5,708
		$ 55,557

$55,557 works out at $27.60 per sq. ft.		
In respect of *Lot 10* (Exhibit P.11A)		
Selling price which includes the price of shophouse		$ 60,000
Less — Costs of shophouse (including filling)	$ 3,000	
Income for 1½ years at 5% i.e. $57,000 x 3/2 x 5%	$ 4,275	
Developer's risks at 20% i.e. $57,000 x 20%	$11,400	$ 18,673
		$ 41,325
Enhanced Premium		$ 3,839
		$ 37,486
$37,486 works out at $18.64 per sq. ft.		
In respect of *Lot 19* (Exhibit P.11B)		
Selling price including price of shophouse		$ 50,000
Less — Costs of the shophouse (including filling)	$ 3,000	
Loss of income for 1½ years at 5% i.e. $47,000 x 3/2 x 5/100	$ 3,432	
Developer's risks at 20% i.e. $47,000 x 20/100	$ 9,400	$ 15,832
		$ 34,168
Enhanced Premium		$ 3,135
		$ 31,015
$31,015 works out at $15 per sq. ft.		
In respect of *Lot 56* (Exhibit P.12)		
Selling price of ½ share together with shophouse		$ 27,640
Therefore selling price of whole share		$ 55,280
Less — Costs of shophouse (including filling)	$20,000	
Loss of income for 1½ years at 5% i.e. $35,280 x 3/2 x 5%	$ 2,646	
Developer's risks at 20% i.e. $35,280 x 20/100	$ 7,056	$ 29,702
		$ 25,578
Enhanced Premium		$ 2,426
		$ 23,152
$23,152 works out at $12.50 per sq. ft.		
If the costs of the shophouse (including the costs of filling)	$16,000	
Then price of the land would be i.e. $14.20 per sq. ft.	$25,960	
In respect of *Lot 80* (Exhibit P.13)		
Selling price together with shophouse		$ 50,000
Less — Costs of shophouse (including the costs of filling)	$20,000	
Loss of income for 1½ years at 5% i.e. $30,000 x 3/2 x 5%	$ 2,250	
Developer's risks at 20% i.e. $30,000 x 20/100	$ 6,000	$ 28,250
		$ 21,750
Enhanced Premium		$ 2,189
		$ 19,561
$19,561 works out at $10.70 per sq. ft.		
If the costs of the shophouse (including cost of filling etc.)	$16,000	
Then price of the land would be i.e. $12.15 per sq. ft.	$23,100	

Mr. Abernethy on behalf of the respondent contended that the land acquired should be valued at its present disposition and should not be valued on the conjectural ground that it was capable of conversion into shop-lots.

In other words the land must be valued as it stands, and not valued as sub-divided when it is not in fact sub-divided.

In a most useful argument he has referred the court to *Superintendent of Lands & Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.*[1] at page 246, where Suffian J., as he then was, said:—

"Some 20 years later Lord Keith in giving the judgment of the Privy Council in an appeal from New Zealand, *Maori Trustee* v. *Ministry of Works*[2] concerning the market value of a parcel of land 91 acres in area suitable for sub-division and sale in sub-divided lots but on the material date not yet sub-divided, quoted with approval at page 16 the following passage in the judgment of Gresson J.:—

In my opinion in this case the land must be valued for what it in fact was on the specified date — a tract of land capable as to some, perhaps all of it, of sub-division into building allotments, and of being sold at some time and over some period in that form. That circumstance would influence a purchaser in his determination of price. In estimating what price a purchaser would be willing to pay recourse may be had to an examination of the estimated gross yield from a sub-division as yet notional only, and the estimated deductions that a purchaser would have to take into account; but that is the extent to which a notional sub-division can be regarded. There must be excluded from the court's contemplation retention by the claimant and an assessment of what in his hands it would yield if sub-divided; because that course is not open to him. At the time value has to be determined the land was in fact not . . . . sub-divided so as to permit of sale piecemeal. A good deal requires to be done before there can be disposal in that manner, and as well as expenses there will be risk and delay."

It was suggested to us that we uphold the superintendent's award of $28,000 or if the court disagrees then the valuation of Mr. Searcy's award of $41,860 as a true market value of the property as at 16 December, 1966 should be accepted.

Both the superintendent and Mr. Searcy agree that the potentialities as a shop-lot is only a possibility.

There is no dispute that Lot No. 160 will eventually be sold as 5 shop-lots with parking facilities for 12 cars.

It is impossible to say when. It depends on population survey.

Mr. Searcy considered Lot No. 160 has potentialities. It is in the centre of the pro-

posed expansion which could take any number of years.

We will deal with matter in a moment.

It was to say the least unfortunate that Mr. Abernethy omitted to put in the comparative sales prepared by the superintendent which were in his possession at the proper stage of the hearing and its subsequent production was strenously objected to (and rightly) by counsel for the applicant.

A certain amount of evidence has been led as to "offers" and such evidence is not inadmissible but to be of value it must for example be "firm" offers supported by the testimony of reliable witnesses or documentary evidence.

If any authhority is needed for that proposition it is to be found in *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue Johore.*[3]

Too much importance cannot therefore be attached to the evidence that Shaw Organisation offered to pay $121,500 for the construction of a cinema.

Evidence was led to the effect that a corner shophouse in Block E belonging to Mr. Khoo Peng Loong (P.W.3) was sold for $61,000 in 1951. The Assistant Registrar, Lands and Surveys, Sibu (D.W.3) checked the Register of Deeds of Transfer for the material period, but was unable to find a sale of land and house for that amount in that area.

We have no desire to speculate about the matter but it seems to us that there may have been any number of excellent reasons why such a sale is not found.

We therefore disregard that piece of evidence.

It is in our view necessary only to notice some authorities in order to appreciate the respective reasonings found in support of the respective points of view.

Such were the views presented by the counsel on the one side and the other, each urging that which he conceived best calculated to advance the interest of his case.

Expert witnesses frequently differ widely in their views as to property values. It is therefore necessary in the circumstances to weigh carefully the value of all the evidence upon which each is based.

Upon the point of compensation we regret that we are unable to concur with Mr. Ambrose Foo in so far as regards the amount of the figure assessed at $28,000.

We consider however that the approach to the matter by Mr. Searcy far more realistic and more in conformity with the view which we have formed in so far as he regarded the land has an obvious potential in any future expansion of the commercial area since Lot No. 160 is adjacent to the existing bazaar at Sarikei.

As far back as April 1963 approval in principle was given for the change of title condition to shop-lot development upon payment of a new premium as stated in 1314/4-1/2 of 4th April, 1963.

We also agree with him when he said when land has potentialities more valuable than its present use, such as in this particular case, there will generally be several purchasers. The valuation would have to be reduced by an appropriate sum by reason of the degree of possibility that the land might never be so required, or might not be required for a considerable time, unless of course, the purchasers were acquiring for that purpose.

It is therefore the value to the owner as a possibility and not as realised in the hands of the purchaser in relation to any scheme of the latter. The fact that the title restricts the use of the land to residential use would naturally detract from the potential of the land.

We also have in mind the case of *Corrie* v. *MacDermott* [4] at page 1063 where the Privy Council in their judgment said:—

> "It seems quite plain that although, as above said by their Lordships, restrictions must be kept in view, the chance of such restrictions being discharged must also be kept in view."

We are content to adopt for the purposes of our judgment the second valuation report of Mr. Searcy.

He took into consideration the fact that the land was sub-divided and valued the land as such. We agree with that view.

It cannot here be disputed and indeed was conceded by counsel for the applicant that Mr. Searcy's second method of valuation commended itself to him. What was really in dispute is the question of gross realization.

Before coming to a conclusion on the point we shall address ourselves to the principles that should guide a court in such a matter.

Section 60(1) of the Land Code so far as material provides as follows:—

> "In determining the amount of compensation to be awarded for land resumed under this part, the court shall take into consideration —
>
> (a) the market value at the date of the publication of the notification under section 47 or if no such notification has been published the market value at the date of the posting of the declaration made under section 48."

"Market value" has been defined in various cases as the price a willing purchaser is prepared to pay a willing seller for the property in open market.

Section 61 of the Land Code (omitting the immaterial words) provides as follows:—

"In determining the amount of compensation to be awarded for land resumed under this part, the court shall not take into consideration —

(e) any increase in the value of the land resumed likely to accrue from the use to which it will be put when resumed."

In assessing the market value the effect of any express or implied condition of title restricting the use to which the land may be put has to be taken into account.

We have therefore to consider, having regard to the evidence what is the fair sum to award to the claimant in respect of this land.

It is undoubtedly true that in awarding compensation any and every element of value which the lands possess to the owner must be taken into consideration in so far as it increases the value to him. In other words, not the land alone, but the land with all its potentialities must be considered in assessing the value.

Mr. Searcy has to ascertain the value to the land owner as best he can and we think it quite fair for him to do what has been done in the present case.

We would refer to *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* at p. 247 which established that the onus of showing that the award was inadequate lay upon the owner. In our opinion it has been satisfactorily established.

With the above general remarks we ought perhaps to refer to *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [5] where the Privy Council quoted with approval at page 60 the following passage in the judgment of Suffian J., as he then was:—

"He refers there to the omission of the High Court to consider the effect on the market price a willing purchaser might be prepared to pay of the risk of refusal or delay of sub-division permission, of the risk that the lands might never be required for industrial and building purposes for a considerable time, and the necessity for the prospective purchaser making allowance for interest and development costs over an uncertain period."

In such an enquiry relating to subjects abounding with uncertainties, there is more than ordinary room for guess work and it would be very unfair to require an exact exposition of reasons for the conclusions arrived at, as valuation can never be a strictly mathematical process.

Upon the point of compensation we regret that we are unable to concur in so far as regards the amount the figure assessed. Mr. Searcy has assessed the value of the land at $41,000 while in our opinion the value should be the higher sum of $60,000.

Taking the evidence as a whole and making all due allowances, we vary the award of the Government valuer and allow compensation to the applicant at $60,000 which we consider fair and reasonable with interest at 4% on the excess.

The amount awarded by the court exceeds the sum awarded by the superintendent but here the claim of the applicant is to our minds quite excessive and the court orders that the applicant pay its own costs and half the costs of the superintendent.

Chieng Hie Kwong and **Lee Swee Ling, Assessors,** concurred.

Order accordingly.

KESATUAN PEKERJA2 KENDERAAN JAYA v. INDUSTRIAL COURT & ORS.

[O.C.J. (Abdul Aziz J.) March 11, 1969]

[K.L. — Originating Motion No. 15 of 1968]

Industrial Law — Trade union — Recognition by employer — Discretion of Minister to refer matter to court — Jurisdiction of the Industrial Court — Application for prohibition to stay proceedings — Order of prohibition — Industrial Relations Act, 1967, ss. 8 and 10.

Administrative Law — Prohibition — Application for — Stay of proceedings — Industrial court.

The applicant sought for an order of prohibition to stay proceedings in the Industrial Court on the ground that court lacked or was acting in excess of its jurisdiction. The facts were that the employer company had by letter recognised the applicant trade union as representing the workers of the company. Subsequently a rival trade union claimed to represent the workers and subsequently the Minister referred the dispute to the Industrial Court. The applicant contended that as recognition had been accorded to them by the employer, the Industrial Court had no jurisdiction to determine the question of recognition.

Held: (1) the Industrial Court is subject to the controlling jurisdiction of the High Court;

(2) section 10 of the Industrial Relations Act could only mean that where recognition has been accorded to a trade union as representing workmen either by the court or by the employer, no other trade union shall make a claim to the employer under section 8 of the Act for recognition in respect of the same workmen or class of workmen within a period of two years;

(3) the Minister's discretion to refer a matter to the Industrial Court is however unfettered by section 10 of the Industrial Relations Act and as in this case, reference has properly been made, the Industrial Court obtained jurisdiction and the jurisdiction was not vitiated or diminished by the initial lack of *locus standi* of the claimant when he made the claim.